



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MKB/170454

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a telephone hearing was held on December 22, 2015.

The issue for determination is whether the agency properly determined that the Petitioner is not disabled

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 11-year old resident of Brown County. Petitioner's primary diagnosis is autism.
2. On February 16, 2015, an Application for Wisconsin's Children's Long Term Support Programs was submitted on behalf of the Petitioner. The application notes that the Petitioner is applying for the Wisconsin Medicaid Katie Beckett Program. On September 17, 2015, the agency denied

the Petitioner's application finding he is not disabled. On October 19, 2015, the Petitioner filed a request for reconsideration.

3. The reconsideration request was denied on or about December 1, 2015.

DISCUSSION

The Children's Long Term Support (CLTS) program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual ("the Manual") that became effective with the start of the CLTS program. It can be found on the internet at <http://dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is that he must be disabled under social security standards. Manual, §2.05B.

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The current definition of a disabling impairment for children is as follows:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet, medically equal or functionally equal the requirements of the listings [Listing of Impairments in appendix 1 of Subpart P of part 404 of this chapter], or
- (2) Would result in a finding that you are disabled under § 416.994a.

20 C.F.R. §416.911(b). §416.994a referenced in number (2) describes disability reviews for children found disabled under the prior law.

The process of determining whether an individual meets this definition is sequential. See 20 C.F.R. §416.924. First, if the claimant is doing "substantial gainful activity", he is not disabled and the evaluation stops. Petitioner is not working, so he passes this step.

Second, physical and mental impairments are considered to see if the claimant has an impairment or combination of impairments that is severe. If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it will not be found to be severe. 20 C.F.R. §416.924(c). In this case, the agency found the Petitioner's impairment is severe.

Next, the review must determine if the claimant has an impairment(s) that meets, medically equals or functionally equals in severity any impairment that is listed in appendix 1 of subpart P of Part 404 of the regulations. I reviewed listing number 112.10 for Autistic Disorder. To be eligible under the listing, the child must have marked impairments in two of the following domains: cognitive/communicative functioning, social functioning, personal functioning, and maintenance of concentration, pace, and persistence. If the child does not meet a listing, the review moves to the next step. I will move there immediately because the next step incorporates the listing areas but adds two additional areas (motor control and physical health).

If a child does not meet or equal the listing, the last step of the analysis is the assessment of functional limitations as described in sec. 416.926a of the regulations. This means looking at what the child cannot do because of the impairments in order to determine if the impairments are functionally equivalent in severity to any listed impairment. The child must have marked impairments in two of the following six

domains: (1) cognitive/communicative functioning, (2) maintaining concentration, persistence, and pace, (3) social functioning, (4) motor control, (5) personal functioning, and (6) physical health. To be found disabled, the child must have marked limitations in two of the six areas, or an extreme limitation in one of the areas. 20 C.F.R. §416.926a(b)(2).

"Marked" limitation and "extreme" limitation are defined in the regulations at 20 C.F.R. §416.926a(e). Marked limitation means, when standardized tests are used as the measure of functional abilities, a valid score that is two standard deviations below the norm for the test (but less than three standard deviations). For children from ages three to age eighteen, it means "more than moderate" and "less than extreme". The regulation provides that a marked limitation "interferes seriously with the child's ability to independently initiate, sustain, or complete domain-related activities. Day-to-day functioning may be seriously limited when the child's impairment(s) limits only one activity or when the interactive and cumulative effects of the child's impairment(s) limit several activities." In comparison, "extreme" limitation means a score of at least three standard deviations below the norm or, for children ages three to age eighteen, "the impairment(s) interferes very seriously with the child's ability to independently initiate, sustain or complete domain-related activities."

Petitioner was found by the agency to have no limitations in domain 4. He was found to have less than marked limitations in domains 1, 3, 5, and 6. He was found to have marked limitations in domain 2. No extreme limitations were found by the agency. The Petitioner was represented at the hearing by his mother. Her testimony diverged with the agency's assessment of domain #'s 5 and 6.

The test scores of the Petitioner reflect that his limitations, while severe, do not meet the definition of "marked" or "extreme" limitations, with the exception of social functioning. Test results indicate the Petitioner's cognitive skills are average or above average. His communication skills, specifically his ability to acquire and use information, while affected by his autistic disorder are "less than marked" based on his IEP and cognitive potential testing via DAS-II and WIAT-III.

The Petitioner's mother testified that Petitioner suffers from PTSD as a result of sexual molestation at the ages of 4 and 5. This is exacerbated by his autism, which his mother reports has led him to self-harming and extenuated school absences. He is now being home-schooled following cyclical vomiting and dysautonomia-related absences. She is concerned that he seems to be going down hill.

The evidence is somewhat inconsistent with test scores supporting the agency analysis that the Petitioner is not disabled because he does not have marked limitations in at least two domains. Based on the provided medical records score, I conclude that he does have a marked limitation in one domain, maintaining concentration, persistence, and pace, but at this time there is not sufficient evidence to conclude that there is a marked limitation in at least two domains. The anecdotal evidence of the parents seems to indicate that the Petitioner's functional limitations have worsened with regard to his physical health, but the record lacks corroborating information in this regard. This decision does not prevent the Petitioner's parents from having additional updated testing performed to determine if updated test results can show that he meets the criteria for a finding of disability.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is not disabled.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 25, 2016.

Brown County Human Services
Bureau of Long-Term Support
Division of Health Care Access and Accountability